

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK MARVIN,

Petitioner,

v.

Civil No. 5:11-CV-15281

HONORABLE JOHN CORBETT O'MEARA

UNITED STATES DISTRICT JUDGE

JOHN PRELESNIK,

Respondent.

**OPINION AND ORDER DENYING PETITIONER'S MOTION FOR
RECONSIDERATION**

On July 13, 2012, the Court dismissed the petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 without prejudice because Petitioner had not exhausted his state court remedies. Petitioner has now filed a motion for reconsideration. For the reasons that follow, the motion for reconsideration is DENIED.

U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (h) allows a party to file a motion for reconsideration. A motion for reconsideration should be granted if the movant demonstrates a palpable defect by which the court and the parties have been misled and that a different disposition of the case must result from a correction thereof. *Ward v. Wolfenbarger*, 340 F. Supp. 2d 773, 774 (E.D. Mich. 2004); *Hence v. Smith*, 49 F. Supp. 2d 547, 550-51 (E.D. Mich. 1999). A motion for reconsideration which merely presents "the same issues ruled upon by the Court, either expressly or by reasonable implication," shall be denied. *Ward*, 340 F. Supp. 2d at 774.

Petitioner's motion for reconsideration will be denied, because Petitioner is merely presenting issues which were already ruled upon by this Court, either expressly or by reasonable implication,

when the Court denied the petition for writ of habeas corpus. *See Hence v. Smith*, 49 F. Supp. 2d at 553. Petitioner argues that he should be excused from the exhaustion requirement because he has tried, but failed, to raise his claims in the state courts. But the fact remains that the Michigan Court of Appeals explicitly informed Petitioner that he is required to present his claim to them in a complaint for superintending control rather than a complaint for mandamus.

Based upon the foregoing, **IT IS ORDERED** that the motion for reconsideration [Dkt. # 16] is **DENIED**.

s/John Corbett O'Meara
United States District Judge

Date: August 27, 2012

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, August 27, 2012, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager